



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 6, 1998

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
Criminal Law & Police Division
1500 Marilla
Dallas, Texas 76201

OR98-2374

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118020.

The City of Dallas received a request for several categories of information concerning the employment and future employment of Mr. John Ware. You indicate that all responsive information has been released except for one document, a draft employment proposal with a private investment firm. You have submitted the draft proposal as Exhibit B. You contend that the information in Exhibit B is not public information subject to the Open Records Act. You assert, alternatively, that the information may be protected as confidential financial or proprietary information under sections 552.101, 552.104, or 552.110. We have considered your arguments and have reviewed the document at issue.

Initially, you argue that Exhibit B need not be released because it is not "public information" subject to the Open Records Act. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, even if information is collected, assembled, or maintained by a third party, it will be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Open Records Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information).

You explain that the document in question

is a private business proposal between Mr. Ware and Mr. [Thomas] Hicks. The proposal is addressed to Mr. Ware at his former personal residence and was hand-delivered to him. Exhibit B has been maintained by Mr. Ware separately from official City of Dallas documents. The information in Exhibit B was not collected or maintained by or for the City of Dallas under a law or ordinance nor does it relate to the transaction of official business of the City of Dallas.

Although you do not explain how or why the city obtained a copy of the document, we presume from your arguments that the city does not have a right of access to the information. Open Records Decision Nos. 558 (1990) (The Open Records Act does not ordinarily require a governmental body to obtain information not in its possession.), 499 (1988). As you represent that the information was not collected or maintained by the city nor involves the transaction of official business, we find that Exhibit B is not public information as contemplated by the Open Records Act. Consequently, the information at issue need not be released.

Because we reach a determination on other grounds, we need not consider the claimed exceptions to disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118020

Enclosures: Submitted documents

cc: Mr. Todd J. Gillman
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(w/o enclosures)